

THE ADMINISTRATION OF JUSTICE IN KASHMIR
STATE DURING DOGRA RULE

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*Vidya Bhushan**

I

"DURING MOST OF human history, societies did not make any theoretical distinction between law-making and law enforcement nor did they establish governmental agencies clearly specializing in one kind of operation over the other. Kings, as well as their ministers and courts made and enforced laws."¹ The same was true during the administration of earlier Dogra rulers. As legal system and administration of justice generally reflect the politico-economic and social development of the people, their institutional life, traditions, norms of behaviour, it was neither, therefore, possible nor even desirable for them to impose on an under-developed and traditional society like that of Kashmir a system based on modern values and attitudes.

The first two Dogra rulers carried on the administration as personal rule, though they were assisted by a number of advisers headed by a Chief Minister. The apparatus of justice, therefore, remained unorganised, arbitrary and medieval in the first thirty years of Dogra rule. However, the courts of appeal at Jammu and Kashmir, in one form or the other, and below them a number of other courts, have been existing since the earlier days of the Dogras. But the judicial system was nothing but a blend of inefficiency and nepotism. Anyhow, the administration of justice in the State during Dogra rule can briefly be discussed under the following heads :

1. Maharaja as a fountain of justice

Maharaja Gulab Singh inherited a kingdom which had already seen many masters and received an autocratic legacy from the Sikhs. He was not a reformer but a founder and "the present Jammu and Kashmir state is his monument."² He devoted most of his time towards the consolidation and building up his newly acquired empire. He had hardly any time left for setting up an administration. So far as the administration

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of justice was concerned there were no special courts, nor any code of procedure for guidance³, "To administer justice was the duty of no one, yet everyone, who held any responsible post throughout the State, was responsible to administer it both in the civil and criminal cases."⁴ Apart from common sense, there were for guidance the Hindu and Mohammedan Laws and the orders of the Maharaja, which might be termed as the law of equity.⁵ The Kardar, who used to realize land revenue, and the Kotwals, whose duties were to suppress crimes, served as the original or the lowest court within their respective jurisdiction. The Maharaja himself was the highest court of appeal.⁶ The Maharaja could readily deal with the petitions represented at any time or place. Only the petition had to be accompanied by a "Nazar" (gift) of one rupee.⁷

It was a rule of one man in whom vested all the judicial power. "His justice was rude, but it was expeditious." He was relentless in his punishment and his summary methods made him a terror.⁸

2. Adalat-i-Alia (High Court) and its powers

Before Maharaja Ranbir Singh all the earlier rulers of the State had made a point merely to exploit the State, rather than introduce even a modicum of administrative reforms either civil or judicial. There were neither laws nor law courts.

Maharaja Ranbir Singh gave a new touch to the Judiciary and established regular courts of justice with defined powers. "Chakladars" were appointed at every police station to dispose of petty civil and criminal cases.⁹ In 1873, a mixed court composed of a British Officer and a civil judge, belonging to the State, was established to decide suits between Europeans and their servants, on the one hand and the subjects of the Maharaja on the other.¹⁰ To place the administration

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of justice on sound footing an Adalat-i-Alia (High Court) was established in 1877 and its powers were also defined as :

The High Court (Adalat-i-Alia) shall be deemed for the purposes of all enactments for the time being in force to be the highest court of appeal or revision, subject to the control and the judicial powers exercised by his Highness the Maharaja Sahib Bahadur. The general superintendence and control over all other civil courts shall be vested in, and all other courts shall be subordinate to the High Court.¹¹

By 1885 an Adalat Sadar (Chief Court) was created at Jammu and another at Srinagar.¹² "The judges of the Sadar adalats were subordinate to the governors of their respective provinces, whose advice was sought while deciding important cases."¹³ The State civil procedure code,¹⁴ a criminal code,¹⁵ a penal code of 100 sections in Dogri and then a new penal code Sri Ranbir Dandbidhi were compiled and introduced.¹⁶

In all cases of imprisonment for more than five years a direct order from the Maharaja was required. In capital cases the Maharaja was aided by Jury. Justice was inexpensive and it required only half a rupee worth stamp to be heard by the Maharaja.¹⁷ Sometimes even petty cases went before the Maharaja and it was open to the parties to present their cases directly instead of approaching the inferior courts first.¹⁸ There were in all 25 courts in the State of which 14 were Wazarat courts.¹⁹ Inspite of this improvement all the judicial, the executive and the legislative powers still remained vested in the Ruler.²⁰

3. Reorganisation of Judicial system and the establishment of a High Court with one Judge

The judicial system was thoroughly reorganised during the reign of Maharaja Partap Singh.²¹ The laws of the State were modernised and

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4. Modelling the State Judiciary on a system prevalent in the British India and constitution of a High Court of Judicature

Judicial Circular No. 201, passed under Regulation No. 39 dated January, 1896, authorised the adoption of many important British Indian Acts, in so far as their contents were not repugnant to any law or practice established in the State.²⁶ In 1913, the British Indian code of criminal procedure (Acts V of 1898) with certain modifications was introduced.²⁷ "To make justice more accessible to the people the number of courts were increased in 1889 and 1904. A munsiff and a sub-judge were appointed in every tehsil and district respectively."²⁸

H.H. Maharaja Hari Singh's Government also took a special care to see that the administration of Justice was cheap, expeditious and pure.²⁹ The State Judiciary was then modelled on the system prevalent in the British provinces and justice was administered by courts regularly graded as in British India, culminating in a High Court. A High Court of judicature, with considerably enlarged powers on the lines of the High Courts in British Indian provinces, was constituted by Order No. 1 of 26th March, 1928.³⁰ It was one of the most important events of that time.³¹ The High Court of judicature comprised a chief justice

22. *Id.* at 5.

23. *A Hand-Book of J & K State* 26 (3rd. ed. 1947) published by J & K Government, Jammu.

24. Anand, *op. cit. supra* note 19 at 222.

25. Jammu & Kashmir Administrative Report, S-1961 1904-5 A.D.) compiled by Rai Bahadur Diwan Amar Nath, p. 2.

26. Jammu & Kashmir Administrative Report for 1904-05, J & K State, p. 29.

27. Memorandum Judicial Department of J & K Government, Old English Record file 188/N. 5 dated 1920.

28. Om, Hari, *op. cit. supra* note 5 at 67.

29. *Supra* note 22.

30. Jammu & Kashmir High Court Constitution 1928, J & K Archives, Jammu.

31. Census of India Vol. XXIV J & K State Part 1, p. 45.

and two puisne judges.³² In matters of appointment, salary and other emoluments of High Court judges, the Maharaja's decision was final.³³ The Maharaja exercised vast powers : so much so that the High Court could not grant leave or transfer subordinate judges and munsiffs except by his approval. With his consent the High Court could confer civil and criminal powers on subordinate judicial officers.³⁴ Even the reduction, suspension or dismissal of a judicial official was subject to his approval.³⁵ Likewise admission and enrolment of advocates, vakils and attorneys-at-law were also subject to the limits fixed by the Maharaja and their qualifications were also prescribed by him in consultation with the judges of the High Court.³⁶ In 1930, of the marked improvement in the judicial administration of the State, the jurisdiction exercised by the Residency Courts in certain categories of civil cases was ceded to the State courts.³⁷ The jurisdiction of the High Court of judicature was then extended to Poonch and Chanani jagirs.³⁸ The Regulation No. 1 of 1991 (1934 A.D.)³⁹ enumerated the powers of executive and legislature but did not incorporate any provision about the judiciary.

5. Establishment of a "prototype Judicial Committee of the Privy Council of England" (His Highness, Board of Judicial Advisers)

The next landmark in the development of judiciary in the State was reached by promulgation of Jammu & Kashmir Constitution Act of 1996 (1939 A.D.).⁴⁰ The Act brought the High Court in line with the corresponding tribunals of the British India and, in organisation of the lower courts, the State generally followed the precedents of British India. The laws enforced in the State had also been, in most cases, adopted from those prevailing in the neighbouring British territory.⁴¹ The Act provided for the establishment of Board of Judicial Advisers⁴² to advise His Highness in regard to the disposal of judicial cases going up to him. The board was to consist of as many members as His

32. *Supra* note 30 at 1.

33. *Ibid.*

34. *Id.* at 45.

35. *Id.* at 7.

36. *Id.* at 6.

37. *Modern Jammu & Kashmir 1925-43*, 7 (1944) J & K Government.

38. *Jammu & Kashmir 1939-49* 2 (1941) H.H. Govt. of Jammu.

39. Regulation of 1991, H.H. Govt. of J & K State, Jammu (1936).

40. Jammu & Kashmir Constitution Act No. XIV of 1996 (1934 A.D.) J & K Govt. 2nd Sept. 1939.

41. Bhushan, Indu; *The Government & Administration in Jammu and Kashmir State* 90; Ph.D. Thesis (unpublished) Lucknow University (1942).

42. Jammu & Kashmir Constitution Act No. XIV of 1996, see 70(i)

Highness might appoint. The Maharaja was also empowered to nominate any person as an ex-officio member of the board to act for the board when it was not in session, provided that such an ex-officio member was not to sit on any bench of the board in the deciding of appeals and other matters referred to for advice.⁴³ The Appeal to His Highness Act XVI of S. 1996 was then enacted to lay down the objective laws for filling appeals before the Board.⁴⁴ Board of Judicial Advisers (procedure) Rules had also been made under Order No. 17-H of 1941.⁴⁵

The Board was to discharge the same function with respect to the State as was performed by the Judicial Committee of the Privy Council with respect to the British India. That was why it was called a "Prototype of the Judicial Committee of the Privy Council of England."⁴⁶ Jammu & Kashmir was the only state in India in which such a high tribunal was established to hear appeals against the decision of the High Court.⁴⁷

6. Separation of Judiciary from the Executive

The most important landmark in the administration of justice in the State was the granting of Letters Patent to the High Court on 28th August, 1943.⁴⁸ It virtually separated the Judiciary from the Executive control and placed it under the Maharaja.⁴⁹ The Prime Minister remained only a channel of communication between the Maharaja and the High Court. It gave to the court a status and prestige of its own.

7. Comparison with the British Indian Courts

The provisions of the Jammu & Kashmir Constitution Act regarding the High Court of judicature⁵⁰ bore a close resemblance to the corresponding provisions of the Government of India Act 1935. The judges of the High Court in the British India were appointed by His Majesty.⁵¹ The provisions regarding resignation and removal from

43. Section 71, *Ibid.*

44. The Appeals to His Highness Act XVI of 1996.

45. The Jammu & Kashmir Law Reports, Vol. I part X S. 1999 Pch. (December, January 1942-43) pp. 338-39.

46. *25 Years of Progress* 32 (1972) J. & K. Govt.

47. *Ranbir* (Weekly) Urdu, 1 July 1940.

48. The Letters Patent granted by H.H. The Maharaja Hari Singh Ji Bahadur on the 28th August, 1943.

49. Annual Administration Report (General) for J. & K. State S. 2000, H.H. Govt. p. 77.

50. J. & K. Constitution Act S. 1996 (XIV of S. 1996) Section 48-70, pp. 13-18.

51. Government of India Act, 1935 sec. 220(i).

office were also similar to the corresponding provisions of the Constitution Act of 1996 (1939 A.D.).⁵² Qualifications necessary for a person to be appointed a judge of High Court as laid down by the Govt. of India Act 1935,⁵³ had been embodied in Jammu & Kashmir Constitution Act of 1996 (1939 A.D.) with slight changes.⁵⁴ The powers and functions of the British Indian high courts as laid down in Act of 1935⁵⁵ were similar to those of State High Court.⁵⁶ Appeals from the decisions of the British Indian high courts were dealt with by the judicial committee of His Majesty's Privy Council. In the State a similar organisation had been set up under the name of His Highness Board Judicial Advisors.⁵⁷ The criminal procedure code which prevailed in the British India was, with slight alterations, enforced in the State also. The British Indian code of civil procedure, too, had been likewise adopted. Consequently the hierarchy of civil and criminal courts in the state was organised on the same lines as the British Indian judiciary.⁵⁸ Although there were about 150 civil and criminal courts in the State,⁵⁹ the establishment of panchayats had made justice more easily accessible to the villagers as far as petty cases were concerned. But the panchayats were not courts primarily.

II

Now, we may turn to a brief description of the forces and factors of modernization⁶⁰ of judicial system as referred above.

The long arduous and evolutionary process of the development and transformation of the judicial system from promotive autocratic to a democratic system involved a number of factors. The most important of them are :

1. One of the first influences in the direction of this modernisation was that of the British rule over the sub-continent. Towards the last quarter of the 19th century, the British interest in Kashmir and its standard of administration was stimulated and accelerated by Czarist

52. *Id.*, see. 220 (2).

53. *Id.*, see. 220 (3).

54. *J. & K. Constitution Act 1996* (XIV of 1996) sec. 51.

55. *Govt. of India Act 1935*, sec. 223 and 224.

56. *J. & K. Constitution Act 1996* (XIV of 1996) Sec. 56.

57. *Ibid.* Sec. 71.

58. Bhushan, Indu, *op. cit. supra* note 41 at 98.

59. *The Annual Administration Report for the Samvat 1996-97* (1939-40) p. 35.

60. 10 *International Encyclopaedia of the Social Sciences* 386. "Modernization is the—The process of Social change whereby less developed societies acquire characteristics common to more developed societies".

Russia's expansionist policy in Central Asia and the State's strategically vital position, particularly in the frontier areas of Gilget. The British wanted to establish their residency in Kashmir and to pressurise the Maharaja for subsequent lease of Gilget. The accession of Maharaja Partap Singh in succession to his father in 1885 gave them an opportunity for achieving their goal and for pressing administrative reform in the State. For various reasons they obtained from straightaway taking over Kashmir. However, all this led to noticeable improvement and structuring of administrative machinery including judicial administration.

2. In the first decade of this century, two degree colleges—one in Jammu and the other in Srinagar, were established for giving the western type of education as was then prevalent in British India. This was somewhat preceded and accompanied by similar move at the level of primary and secondary education. Within a generation an education elite, both in Kashmir valley and Jammu came into existence. A little later some of the young inhabitants from the State, who went to the universities in British India for their post-graduate studies in Law, returned with law degrees. The State also later on started its own munsiffship and pleader-ship examinations. Success in these examinations required knowledge of civil and criminal law as was essential for the B.L. examination of Indian university. All these changes influenced a lot in modernisation of the Judicial system on British-Indian lines.

3. The growth and role of press particularly from British India greatly helped in disseminating the shortcoming of the primitive administration of justice in Kashmir. As a result a number of reforms to modernise the judicial system on British pattern were introduced.

III

The state judiciary was, on the whole, efficient, partial separation of judiciary from executive took place. The judges of high courts were generally drawn from the Bench and the Bar of British Indian high courts and were men of great merit. Some state subjects also had been judges of the High Court.⁶¹ In case of subordinate courts, however, state subjects only were taken, so far as compatible with the securing of efficiency.⁶² Almost all the judicial officers in the state were either Barristers or graduates in law.⁶³ In addition state had also its own

61. Bhushan, Indu, *op. cit. supra* note 41 at 98.

62. *Ibid.*

63. His Highness Govt. : *Modern Jammu and Kashmir State 1925-42* Jammu 1942 p. 35.

munsiffship and pleadership examinations, success in which required in a candidate as high a standard of knowledge of civil and criminal law as was essential for B.L. Examination of an Indian University.⁶⁴ Rules similar to those in British India governed the enlistment of pleaders and advocates in the State.⁶⁵

The laws enforced in the State were not much different from those enforced in the British India. The principles of Hindu, Mohammadan and the customary laws were followed by the courts.⁶⁶ The principles of British Indian law, relating to Torts were also followed by the state courts.⁶⁷ The Ranbir Penal Code No. XII of 1989, the Small Causes Court Regulation of 1968, the Civil Procedure Code X of 1977, the Evidence Regulations 13 of 1977, the Essement Regulations XXVII of 1997, the transfer of Property Regulations XXXXII of 1977, the Criminal Procedure Code XXII of 1989, the Hindu Widows Remarriage and Property Regulations No. XVIV of 1989 were based on the corresponding enactments enforced in British India.

The following were important departures from the laws enforced in British India :

- (a) Voluntary killing a cow was a specific offence and the maximum punishment to be awarded for it was 10 years;⁶⁷
- (b) Change of religion was a ground for exclusion from inheritance as there was no legislation in the State (Like that which prevailed in British India) to nullify the provision of Hindu and Muslim laws on that point.

In short arbitrary justice in Kashmir was gradually replaced by justice according to established laws and procedure.

Despite of all this, the judiciary was not at all free from the executive and the judges of High Court, who held office at the pleasure of Maharaja, did not have security of tenure. These defects were eliminated only after independence.

64. J. & K. *A brief note on Jammu and Kashmir State* 1927 p. 13.

65. *Supra* note 63.

66. Sri Partap J & K Law (Consolidation) Regulation 1977, sec. 4.

67. Sec. 298—A of The Ranbir Penal Code.

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codified.²² The mixed court established in 1873 was abolished and the Resident and his Assistants were invested with powers to dispose of civil suits in which both parties were British Subjects or the defendant was a British subject or an Indian subject to His Majesty.²³ The civil procedure code of 1873 was not a complete code; Maharaja Partap Singh desired to improve it and he was able to do so in 1896 through the council of ministers.²⁴ A High Court consisting of one judge, who was also a Judicial Minister, was organised in 1897. Appeals from it were laid before His Highness in Council.²⁵

4. Modelling the State Judiciary on a system prevalent in the British India and constitution of a High Court of Judicature

Judicial Circular No. 201, passed under Regulation No. 39 dated January, 1896, authorised the adoption of many important British Indian Acts, in so far as their contents were not repugnant to any law or practice established in the State.²⁶ In 1913, the British Indian code of criminal procedure (Acts V of 1898) with certain modifications was introduced.²⁷ "To make justice more accessible to the people the number of courts were increased in 1889 and 1904. A munsiff and a sub-judge were appointed in every tehsil and district respectively."²⁸

H.H. Maharaja Hari Singh's Government also took a special care to see that the administration of Justice was cheap, expeditious and pure.²⁹ The State Judiciary was then modelled on the system prevalent in the British provinces and justice was administered by courts regularly graded as in British India, culminating in a High Court. A High Court of judicature, with considerably enlarged powers on the lines of the High Courts in British Indian provinces, was constituted by Order No. 1 of 26th March, 1928.³⁰ It was one of the most important events of that time.³¹ The High Court of judicature comprised a chief justice

22. *Id.* at 5.

23. *A Hand-Book of J & K State* 26 (3rd. ed. 1947) published by J & K Government, Jammu.

24. Anand, *op. cit. supra* note 19 at 222.

25. Jammu & Kashmir Administrative Report, S-1961 1904-5 A.D.) compiled by Rai Bahadur Diwan Amar Nath, p. 2.

26. Jammu & Kashmir Administrative Report for 1904-05, J & K State, p. 29.

27. Memorandum Judicial Department of J & K Government, Old English Record file 188/N. 5 dated 1920.

28. Om, Hari, *op. cit. supra* note 5 at 67.

29. *Supra* note 22.

30. Jammu & Kashmir High Court Constitution 1928, J & K Archives, Jammu.

31. Census of India Vol. XXIV J & K State Part 1, p. 45.

and two puisne judges.³² In matters of appointment, salary and other emoluments of High Court judges, the Maharaja's decision was final.³³ The Maharaja exercised vast powers : so much so that the High Court could not grant leave or transfer subordinate judges and munsiffs except by his approval. With his consent the High Court could confer civil and criminal powers on subordinate judicial officers.³⁴ Even the reduction, suspension or dismissal of a judicial official was subject to his approval.³⁵ Likewise admission and enrolment of advocates, vakils and attorneys-at-law were also subject to the limits fixed by the Maharaja and their qualifications were also prescribed by him in consultation with the judges of the High Court.³⁶ In 1930, of the marked improvement in the judicial administration of the State, the jurisdiction exercised by the Residency Courts in certain categories of civil cases was ceded to the State courts.³⁷ The jurisdiction of the High Court of judicature was then extended to Poonch and Chananj jagirs.³⁸ The Regulation No. 1 of 1991 (1934 A.D.)³⁹ enumerated the powers of executive and legislature but did not incorporate any provision about the judiciary.

5. Establishment of a "prototype Judicial Committee of the Privy Council of England" (His Highness, Board of Judicial Advisers)

The next landmark in the development of judiciary in the State was reached by promulgation of Jammu & Kashmir Constitution Act of 1996 (1939 A.D.).⁴⁰ The Act brought the High Court in line with the corresponding tribunals of the British India and, in organisation of the lower courts, the State generally followed the precedents of British India. The laws enforced in the State had also been, in most cases, adopted from those prevailing in the neighbouring British territory.⁴¹ The Act provided for the establishment of Board of Judicial Advisers⁴² to advise His Highness in regard to the disposal of judicial cases going up to him. The board was to consist of as many members as His

32. *Supra* note 30 at 1.

33. *Ibid.*

34. *Id.* at 45.

35. *Id.* at 7.

36. *Id.* at 6.

37. *Modern Jammu & Kashmir 1925-43*, 7 (1944) J & K Government.

38. *Jammu & Kashmir 1939-49* 2 (1941) H.H. Govt. of Jammu.

39. Regulation of 1991, H.H. Govt. of J & K State, Jammu (1936).

40. Jammu & Kashmir Constitution Act No. XIV of 1996 (1934 A.D.) J & K Govt. 2nd Sept. 1939.

41. Bhushan, Indu; *The Government & Administration in Jammu and Kashmir State* 90; Ph.D. Thesis (unpublished) Lucknow University (1942).

42. Jammu & Kashmir Constitution Act No. XIV of 1996, see 70(i)

Highness might appoint. The Maharaja was also empowered to nominate any person as an ex-officio member of the board to act for the board when it was not in session, provided that such an ex-officio member was not to sit on any bench of the board in the deciding of appeals and other matters referred to for advice.⁴³ The Appeal to His Highness Act XVI of S. 1996 was then enacted to lay down the objective laws for filling appeals before the Board.⁴⁴ Board of Judicial Advisers (procedure) Rules had also been made under Order No. 17-H of 1941.⁴⁵

The Board was to discharge the same function with respect to the State as was performed by the Judicial Committee of the Privy Council with respect to the British India. That was why it was called a "Proto-type of the Judicial Committee of the Privy Council of England."⁴⁶ Jammu & Kashmir was the only state in India in which such a high tribunal was established to hear appeals against the decision of the High Court.⁴⁷

6. Separation of Judiciary from the Executive

The most important landmark in the administration of justice in the State was the granting of Letters Patent to the High Court on 28th August, 1943.⁴⁸ It virtually separated the Judiciary from the Executive control and placed it under the Maharaja.⁴⁹ The Prime Minister remained only a channel of communication between the Maharaja and the High Court. It gave to the court a status and prestige of its own.

7. Comparison with the British Indian Courts

The provisions of the Jammu & Kashmir Constitution Act regarding the High Court of judicature⁵⁰ bore a close resemblance to the corresponding provisions of the Government of India Act 1935. The judges of the High Court in the British India were appointed by His Majesty.⁵¹ The provisions regarding resignation and removal from

43. Section 71, *Ibid.*

44. The Appeals to His Highness Act XVI of 1996.

45. The Jammu & Kashmir Law Reports, Vol. I part X S. 1999 Poh. (December, January 1942-43) pp. 338-39.

46. *25 Years of Progress* 32 (1972) J. & K. Govt.

47. Ranbir (Weekly) Urdu, 1 July 1940.

48. The Letters Patent granted by H.H. The Maharaja Hari Singh Ji Bahadur on the 28th August, 1943.

49. Annual Administration Report (General) for J. & K. State S. 2000, H.H. Govt. p. 77.

50. J. & K. Constitution Act S. 1996 (XIV of S. 1996) Section 48-70, pp. 13-18.

51. Government of India Act, 1935 sec. 220(i).

office were also similar to the corresponding provisions of the Constitution Act of 1996 (1939 A.D.).⁵² Qualifications necessary for a person to be appointed a judge of High Court as laid down by the Govt. of India Act 1935,⁵³ had been embodied in Jammu & Kashmir Constitution Act of 1996 (1939 A.D.) with slight changes.⁵⁴ The powers and functions of the British Indian high courts as laid down in Act of 1935⁵⁵ were similar to those of State High Court.⁵⁶ Appeals from the decisions of the British Indian high courts were dealt with by the judicial committee of His Majesty's Privy Council. In the State a similar organisation had been set up under the name of His Highness Board Judicial Advisors.⁵⁷ The criminal procedure code which prevailed in the British India was, with slight alterations, enforced in the State also. The British Indian code of civil procedure, too, had been likewise adopted. Consequently the hierarchy of civil and criminal courts in the state was organised on the same lines as the British Indian judiciary.⁵⁸ Although there were about 150 civil and criminal courts in the State,⁵⁹ the establishment of panchayats had made justice more easily accessible to the villagers as far as petty cases were concerned. But the panchayats were not courts primarily.

II

Now, we may turn to a brief description of the forces and factors of modernization⁶⁰ of judicial system as referred above.

The long arduous and evolutionary process of the development and transformation of the judicial system from promotive autocratic to a democratic system involved a number of factors. The most important of them are :

1. One of the first influences in the direction of this modernisation was that of the British rule over the sub-continent. Towards the last quarter of the 19th century, the British interest in Kashmir and its standard of administration was stimulated and accelerated by Czarist

52. *Id.*, sec. 220 (2).

53. *Id.*, sec. 220 (3).

54. *J. & K. Constitution Act 1996* (XIV of 1996) sec. 51.

55. *Govt. of India Act 1935*, sec. 223 and 224.

56. *J. & K. Constitution Act 1996* (XIV of 1996) Sec. 56.

57. *Ibid.* Sec. 71.

58. Bhushan, Indu, *op. cit. supra* note 41 at 98.

59. *The Annual Administration Report* for the Samvat 1996-97 (1939-40) p. 35.

60. *10 International Encyclopaedia of the Social Sciences* 386. "Modernization is the—The process of Social change whereby less developed societies acquire characteristics common to more developed societies".

